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Schwaninger & Associates, P.C. *Attorneys at Law*

1331 H Street, N.W., Suite 500, Washington, DC 20005
Internet Address – http://www.sa-lawyers.net
telephone – (202) 347-8580
facsimile – (202) 347-8607

Robert H. Schwaninger, Jr.
Michael L. Higgs, Jr. †
Delaney M. DiStefano
Benjamin J. Aron
Richard P. Hanno †
Garret R. Hargrave ††
†Admitted in Maryland
††Admitted in Indiana

Vic Jackson
Interconnection Consultant

May 3, 2002

via Hand Delivery

William F. Caton
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Qualex International
Portals II
445 12th Street, SW
Room CY-B402
Washington, DC 20554

Michael J. Wilhelm
Public Safety & Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Comments to Notice of Proposed Rule Making, WT Docket 02-55
In the Matter of Improving Public Safety Communications
in the 800 MHz Band
Consolidating the 900 MHz Industrial/Land Transportation
and Business Pool Channels

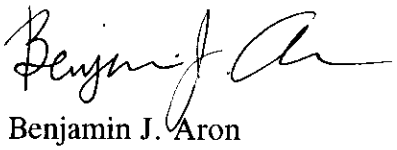
Dear Sirs:

We represent the telecommunication interests of C & M Communications, Inc. (C & M). On behalf of C & M, we submit its comments to the above referenced matter, WT

Docket No. 02-55. C & M provides commercial service on the 800 MHz band. As its operations will be directly impacted by the outcome of the above referenced proceeding, C & M wishes the Commission to consider its comments and the opinions and concerns expressed therein.

To comply with the filing requirements announced in the NPRM, C & M encloses the original copy of its comments herein, along with six copies thereof. The original comments and four copies should be delivered to William F. Caton. One copy should be provided to Qualex International, and one copy should be provided to Michael J. Wilhelm. Please feel free to contact us should there be any questions.

Very truly yours,



Benjamin J. Aron

enclosure
cc: Laura Smith
BJA:cfh

Before the

Federal Communications Commission

Washington, D.C. 20554

In the Matter of	)	
	)	
Improving Public Safety Communications in the 800 MHz Band	)	**WT Docket No. 02-55**
	)	
Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels	)	

Comments of C & M Communications, Inc.

C&M Communications, Inc. (C&M) is a 800 MHz radio operator in Arizona, with years of experience serving business, industrial and public safety end users. Pursuant to 47 C.F.R. §90.699, C&M has engaged in relocation from the Upper 200 channels in cooperation with the EA licensee for that area, Nextel Communications, Inc. Accordingly, C&M remains vitally interested in the long-term development of the 800 MHz band and the effect that any rebanding of that spectrum may have on C&M's business. Having recently expended considerable resources to negotiate an agreement with Nextel to effect relocation, C&M is disturbed about the prospect of another relocation to accommodate Nextel for the purpose of joining in solving interference problems which are not of the Company's making and not likely to ever be a problem as between the Company and public safety licensees.

Of primary concern to C&M is the proposal put forth by Nextel suggesting that operators, like C&M, be relocated to either 700 or 900 MHz or receive secondary status in continued use of their licensed 800 MHz channels. This proposal is wholly without merit. First, the relocation to either 700 or 900 MHz channels would require a wholesale replacement of equipment. In response

to the Commission's inquiry regarding whether 800 MHz radios may be retuned to either band, the answer is a simple "no." Accordingly, the cost to relocate C&M's and other, similarly situated operations, would be quite extreme. Estimates of cost for such relocation are reckoned at approximately $2 billion by Motorola and others. If such figures were not disturbing in themselves, the Nextel proposal is for each operator to pay their individual costs for such relocation. Yet, Nextel fails to explain why this extreme burden is being placed on local operators without any concurrent benefit other than participation in assisting CMRS cellularized systems in meeting their obligation to avoid the creation of harmful interference. Although C&M supports the agency's search for a solution to the interference problems suffered by public safety, C&M strongly urges the agency to look to the interfering parties for resolution and financing and not innocent bystanders.

The interference suffered by public safety entities arises from the operation of Nextel and the A and B cellular operators. Additionally, integrated, digital systems like that operated by Southern Company, following further possible redesign to provide increased frequency usage via construction of low-height fill-in sites to meet increases in per-site demand, may also become sources of harmful interference to public safety operations. The combination of intermodulation products which create spurious, unintended radiation into analog receivers, and the increased noise floor that is witnessed by anyone employing a spectrum analyzer in proximity to the cellularized operations, is apparent. Yet, these are not characteristics of the type of operation employed by C&M and other, local analog operations. Accordingly, the source of the interference is fully known and has been known for years by all 800 MHz operators.

What is further known is that most, if not all, incidents of interference can be remedied by the interfering party. The cellularized systems can be redesigned to avoid the creation of intermodulation products which create interference, by directing the effort specifically at those analog operations that provide service in the same area and avoiding those channels that in combination create the interfering intermodulation products. C&M does not suggest that this effort would be easy, or that it would not require a type of frequency coordination which raises the sophistication of the coordination art above simple cochannel efforts. However, it is certainly doable and should be done by the interfering CMRS operators in compliance with their respective duties under 47 U.S.C. §303 and 47 C.F.R. §90.173(b). If such redesign requires reducing power, increasing the height of antennas above ground, or simply eschewing the use of discreet channels at particular locations, so be it. Such efforts are no different than these operators have employed in the past to increase internal efficiencies for their own use via sectorization. In sum, by relying first on the CMRS operators' obligation to take necessary steps to avoid interference and to solve incidents of interference on a case-by-case basis, the Commission is relying on these carriers' known engineering capability without shifting unfairly the burden onto commercial analog operators.

Taken in the objective, all proposals to reband the channels are based on a single underlying premise – that the interfering operators are either unwilling or unable to perform the necessary steps to solve interference. Accordingly, that premise leads one to assume that some rebanding is necessary to provide distance on the radio spectrum between CMRS and public safety operations. The flawed premise leads one to an equally flawed conclusion. And in a total rejection of responsibility and a unhealthy heralding of the improper logic, Nextel has taken the extreme position

of proposing that all non-interfering operators be tossed out of the 800 MHz band to an uncertain landing at 700 or 900 MHz.

Perhaps the one portion of the Commission's NPRM that is most disturbing is the Commission's assertion that interfering CMRS operations are in accord with the agency's rules. This is simply incorrect. The Commission has never found that an operator can rely on grant of a license and use of type accepted equipment to "paper over" improper use of facilities. One of the first and most prominent duties of a licensee is to avoid and correct incidents of harmful interference. There is no precedent for any other legal conclusion. Yet, in a bizarre reversal of over sixty years of regulation and rules, the agency is suggesting that this long-standing obligation does not apply to the interfering CMRS operators. The agency's conclusion is without legal or logical support and stands as a hurdle to resolution of this situation in a manner which will provide necessary relief for public safety operations while avoiding harm upon innocent analog operators.

The underlying thread of the Commission's inquiry must be commenced with an inquiry into the issue of whether interfering CMRS operators are, in fact, unable or unwilling to fulfill their obligations as licensees. C&M respectfully avers that those CMRS operators which support radical rebanding efforts are moreover unwilling, rather than unable. Discussions with representatives of the A and B cellular carriers have demonstrated a great willingness to resolve each instance on a case-by-case basis and a confidence on their part that whatever participation their operations have in creating interference, they are willing to expend the necessary resources to resolve each situation to the satisfaction of public safety operators. In stark contrast, Nextel has thrown up its hands and

suggests a radical idea which would require the expenditure of billions of dollars by all to relieve that interference for which it has shown itself unwilling to take responsibility, despite its codified obligations.

It should also escape no one's notice that Nextel has the ability to resolve its own problems. It has the financial, technical and spectrum resources to design a multi-band unit which employs 700, 800 and 900 MHz channels within a single portable unit. In fact, it was just this type of unit which Nextel claimed it was intending to deploy in its request for additional time to construct its 900 MHz SMR systems. In that same proceeding, Nextel also stated as a basis for grant of its waiver its need to employ the estimated $20 million for the purpose of deploying pico cell technology to avoid interference to public safety entities. The Commission's inquiry in this proceeding should extend to an inquiry into whether Nextel's claimed bases for that waiver were disingenuous, merely specious, or evidence Nextel's ability to solve its own problems internally without dipping into the pockets and futures of analog operators. For if Nextel's claims in that recent proceeding are to be taken as true, then the issue of interference resolution is one of willingness, not capacity, to take those steps which Nextel touted as imminent.

Nextel's offer to swap channels with the Commission is also problematic. First, despite Nextel's vaunted claims, it does not hold authority for sufficient 700 and 900 MHz channels to provide a relocation for all affected users. The Commission need only check its own data base and it will find that Nextel's offer is without merit, particularly in view of the 15 kHz channelization at 900 MHz versus the 25 kHz channels authorized at 800 MHz. Accordingly, there is first the problem

of trying to find useable, equal amounts of spectrum for entities which Nextel would relocate. Second, Nextel's authority to use those bands is not "perfected." As the agency is aware, a licensee perfects title to spectrum via construction and making operational facilities operating on that spectrum. There is no evidence that Nextel has constructed in either relevant band or that Nextel even intends seriously to engage in such activities. This, thus, raises an issue of whether Nextel is properly positioned to "assign" those channels to the Commission as trading stock in exchange for the Commission not insisting on Nextel's compliance with its obligations to avoid harmful interference and to provide service to the public in a timely manner on the subject spectrum. Rather, it appears that Nextel is repudiating its obligations to construct or operate on either 700 or 900 MHz channels, or to serve in the capacity of "band manager." Thus, the agency may properly interpret Nextel's actions as a request for cancellation of its licenses at 700 and 900 MHz and accept those licenses without any concurrent obligation to Nextel to exchange that spectrum for any waiver of Nextel's duty to protect public safety licensees.

In a related vein, C&M notes that Nextel's offer appears to include those channels licensed to Nextel Partners, Inc. Although Nextel owns a substantial amount of the equity in that entity, it cannot be found that Nextel controls that entity for the purpose of offering up its authorizations in the manner expressed. Accordingly, when reviewing its data base, the Commission may discount the channels which are not specifically held by Nextel Communications, Inc. and its wholly owned subsidiaries for the purpose of substantiating the viability of Nextel's offer. At this stage, at least, it appears that Nextel has offered that which it does not hold.

In summary, the Commission's duty to protect the legitimate use of the radio spectrum by public safety entities and other analog operators of 800 MHz systems is met by the agency's efforts to inquire into the nature of the problem and to seek resolution of those problems employing methods which evidence an equitable approach to the responsibilities of affected users. C&M believes that the Commission's NPRM evidences the Commission's sincere desire to seek resolution of the problems without any concurrent desire to cause operational and economic upheaval for non-interfering operators. C&M finds no fault with the agency's exploration of all avenues, regardless of the radical nature of some of the already entertained proposals, like Nextel's. Indeed, the agency is bound to engage in such exploration without limitation that might suggest either an arbitrary or draconian approach; providing to all commenting parties the ability to suggest both the extent and solution of the problem. Accordingly, C&M supports the Commission's efforts to date.

However, C&M respectfully recommends that the Commission's inquiry should include a foundation of healthy skepticism regarding the adoption of any rebanding proposal, most notably Nextel's. The cost and time and chaos created by rebanding will be a heavy toll on affected operators. If made to bear that cost, many smaller operators will be unable to survive. And it would be patently unfair to demand that local analog operators bear any such cost, since there is no evidence that any such operator is the source of the harmful interference. Therefore, C&M avers that the Commission's first step in its inquiry should be to examine the extent and nature of the problem, to determine whether rebanding is necessary, feasible or will result in the stated objectives. And as a first (not second or third) alternative, the Commission should look carefully to determine whether a resolution is possible via a severe limiting of rebanding following a determination that the

responsibility for immediate resolution of the problem rests squarely and solely with the interfering CMRS operators. The path to immediate reduction of the problem goes obviously through Section 303 of the Communications Act and into the licensee obligations of the interfering operators. Any other path acts as a de facto waiver of those licensees' primary obligation, to avoid the creation of harmful interference.

Respectfully submitted,

C & M COMMUNICATIONS, INC.

Dated: May 3, 2002

By: _____
Benjamin J. Aron, Esq.

Schwaninger & Associates, P.C.
Attorneys for C & M Communications, Inc.
1331 H Street, N.W., Suite 500
Washington, D.C. 20005
Telephone (202) 347-8580
Facsimile (202) 347-8607